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Comptroller General
of the United States

Washington, D.C. 20548

# Decision

Matter of: Pennel P. Irwin

File: B-254625

Date: February 10, 1994

## DIGEST

An employee received a general notice of a reduction in force, and resigned prior to receiving any specific notice of his own separation. Under these circumstances, we consider the employee's resignation to be voluntary, and we deny the employee's claim for severance pay because the employee here is not considered to be involuntarily separated, for purposes of eligibility to receive severance pay, since the circumstances of his resignation did not fulfill either one of the two separate criteria for receiving severance pay under 5 C.F.R. § 550.706(a)(1) or (a)(2) (1993).

## DECISION

Mr. Pennel P. Irwin appeals our Claims Group's action[1] which denied his claim for severance pay. For the following reasons, we affirm our Claims Group's action and deny his claim.

Mr. Irwin is a former employee of the Department of the Army at the Sacramento Army Depot, Sacramento, California. While employed there, Mr. Irwin and all other employees at that depot received a general notice, dated January 27, 1993, which stated that the majority of positions at that depot would be abolished by June 1994, and that affected employees would be notified 120 days prior to their effective date of separation.[2] Prior to receiving any specific notice of his own separation, Mr. Irwin resigned his position on February 26, 1993.

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[1]Z-2868698, July 21, 1993.

[2]Memorandum from Colonel William J. Grundy, Commanding Officer, to All Sacramento Army Depot Employees, dated January 27, 1993.

Mr. Irwin does not dispute the above facts, but nevertheless contends that his resignation was "involuntary" and further contends that he did not "involuntarily resign" because of any reduction in force but did "involuntarily resign" because of an alleged transfer of function decision that was made in March 1992. Thus, Mr. Irwin believes that his resignation under the circumstances set forth above entitles him to severance pay under either one of the two separate criteria set forth in 5 C.F.R. § 550.706(a) (1993).

Title 5 C.F.R. § 550.706(a) (1993) provides that employees who resign because they expect to be involuntarily separated are considered involuntarily separated, for purposes of eligibility to receive severance pay, only if they resign after receiving: (1) a specific written notice that they will be involuntarily separated, and the notice of separation is not canceled before the resignation is effected, or (2) a general written notice of reduction in force or transfer of function that announces that all positions in the competitive area will be abolished or transferred to another commuting area.

In regard to the first criterion set forth in 5 C.F.R. § 550.706(a)(1) (1993), which requires a specific notice of impending involuntary separation, the general notice, dated January 27, 1993, was not a specific notice to Mr. Irwin that he would be involuntarily separated from his position, and thus does not fulfill the first criterion's requirement for a specific notice. Essentially, rather than waiting to see whether his position would be abolished, Mr. Irwin chose to resign. Under the undisputed factual circumstances set forth above, we consider Mr. Irwin's resignation to be voluntary, and we note that a specific notice in the context of a reduction in force must apprise the employee of the particular personnel action to be taken against him, and its effective date. See 5 C.F.R. §§ 351.802 and 351.803 (1993), and see generally Boyd W. Venable, III, 71 Comp. Gen. 441 (1992). Also, none of the other documents in the record fulfill the first criterion.

In regard to the second criterion set forth in 5 C.F.R. § 550.706(a)(2) (1993), the general notice, dated January 27, 1993, which the Army distributed to Mr. Irwin and all other employees at the Sacramento Army Depot did not announce that all positions in the competitive area would be abolished or transferred to another commuting area, but only that the majority of positions at the depot would be abolished. The text of 5 C.F.R. § 550.706(a)(2) (1993), however, clearly requires that any such general notice of a reduction in force or transfer of function announce that all positions, rather than just a majority of positions, in the competitive area will be abolished or transferred to another commuting area in order for the employees to be entitled to

severance pay under that regulation. Since the general notice, dated January 27, 1993, did not do this, the second criterion is likewise not fulfilled. Also, none of the other documents in the record fulfill the second criterion.

In further regard to the second criterion, we note that Mr. Irwin also alleges that in a memorandum issued about March 1992, the Army decided to abolish or transfer the function of some positions in his competitive area. Mr. Irwin has not supplied a copy of the memorandum in question and the record supplied by the Army in this matter does not contain any such memorandum. However, even if we assume, for the purpose of deciding this case, that what Mr. Irwin alleges is true, such a statement concerning only some of the positions in Mr. Irwin's competitive area would still not fulfill the second criterion since it did not clearly announce that all positions in Mr. Irwin's competitive area would be abolished or transferred to another commuting area. As we noted above, Mr. Irwin chose to resign rather than wait to see whether his position would be maintained, abolished or transferred to another commuting area.

Accordingly, we affirm our Claims Group's action and we deny Mr. Irwin's claim for severance pay.

for Robert P. Murphy
Acting General Counsel